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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-633

11 **JOYCE MARIE WHITAKER**
12 **8633 W. Butler**
13 **Peoria, AZ 85345**
14 **Registered Nurse License No. 615580**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Respondent.

16 **FINDINGS OF FACT**

17 1. On or about April 17, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
18 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs, filed Accusation No. 2012-633 against Joyce Marie Whitaker ("Respondent")
20 before the Board of Registered Nursing.

21 2. On or about March 19, 2003, the Board of Registered Nursing ("Board") issued
22 Registered Nurse License No. 615580 to Respondent. The Registered Nurse License expired on
23 March 31, 2005, and has not been renewed. Pursuant to Business and Professions Code ("Code")
24 section 118, this lapse in licensure however, does not deprive the Board of its jurisdiction to
25 maintain this disciplinary proceeding.

26 3. On or about April 17, 2012, Respondent was served by Certified and First Class Mail
27 copies of the Accusation No. 2012-633, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
2 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
3 on record with the Board was and is:

4 **8633 W. Butler**
5 **Peoria, AZ 85345.**

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

8 5. On or about May 2, 2012, the domestic return receipt, for the aforementioned
9 documents served via Certified Mail, was received by the Board indicating that the documents
10 were received by Respondent on April 20, 2012. The aforementioned documents served via First
11 Class Mail were not returned by the U.S. Postal Service marked as undeliverable.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2012-
20 633.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 2012-633, finds

1 that the charges and allegations in Accusation No. 2012-633, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$337.50 as of May 11, 2012.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Joyce Marie Whitaker has
8 subjected her Registered Nurse License No. 615580 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
11 Nurse License based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case.:

13 a. **Disciplinary Action by the Arizona State Board of Nursing.** Respondent is
14 subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of
15 unprofessional conduct in that Respondent's professional nurse license was disciplined by the
16 Arizona State Board of Nursing ("Arizona Board"). On or about March 19, 2008, pursuant to the
17 Findings of Fact, Applicable Law, Conclusions of Law, and Order No. 07A-0603053-NUR,
18 issued by the Arizona Board, in the disciplinary action entitled *In the Matter of Professional*
19 *Nurse License No. RN084343 issued to Joyce Marie Whitaker aka Phillips*, the Arizona Board
20 revoked Respondent's professional nurse license. The basis for the Order is as follows:

21 i. The Arizona Board established that Respondent intentionally withheld
22 physician-prescribed medication from patients under her care, which caused her patients
23 emotional injury, that Respondent made medication errors and errors in her notation in patient
24 records, and that she failed to follow her employers' policies regarding patient care and removal
25 of patient records.

26 ii. The Arizona Board established that Respondent was confrontational and
27 aggressive and generally refused to take any direction or any responsibility for her errors, refused
28 her employers' attempts to help her salvage her employment and career, and generally blamed her

1 employers, colleagues, and her patients for her own professional shortcomings, which
2 compromised Respondent's care of her patients.

3 **b. Unprofessional Conduct.** Respondent is subject to disciplinary action under
4 Code section 2761, subdivision (a), in that Respondent committed acts of unprofessional conduct.
5 The conduct is more particularly described in paragraph 3, subparagraph (a) (i-ii), inclusive,
6 above, and herein incorporated by reference.

ORDER

IT IS SO ORDERED that Registered Nurse License No. 615580, heretofore issued to Respondent Joyce Marie Whitaker, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 31, 2012.

It is so ORDERED August 3, 2012

Raymond Mallef

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:LA2012506403

Exhibit A

Accusation Case No. 2012-633

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2012 - 633**

11 **JOYCE MARIE WHITAKER AKA**
12 **JOYCE MARIE PHILLIPS**
13 **8633 W. Butler**
Peoria, AZ 85345
14 **Registered Nurse License No. 615580**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about March 19, 2003, the Board of Registered Nursing issued Registered
22 Nurse License Number 615580 to Joyce Marie Whitaker, also known as Joyce Marie Philips
23 ("Respondent"). The Registered Nurse License expired on March 31, 2005, and has not been
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

5. Section 118, subdivision (b) of the Code provides, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action . . .”

8. Section 2811, subdivision (b) of the Code provides:

“Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.”

1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section, 1419.3 provides:

3 "In the event a licensee does not renew his/her license as provided
4 in Section 2811 of the code, the license expires. A licensee
5 renewing pursuant to this section shall furnish a full set of
6 fingerprints as required by and set out in section 1419(b) as a
7 condition of renewal.

8 (a) A licensee may renew a license that has not been expired for
9 more than eight years by paying the renewal and penalty fees as
10 specified in Section 1417 and providing evidence of 30 hours of
11 continuing education taken within the prior two-year period.

12 (b) A licensee may renew a license that has been expired for more
13 than eight years by paying the renewal and penalty fees specified in
14 Section 1417 and providing evidence that he or she holds a current
15 valid active and clear registered nurse license in another state, a
16 United States territory, or Canada, or by passing the Board's current
17 examination for licensure."

18 **COST RECOVERY**

19 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Disciplinary Action by the Arizona State Board of Nursing)**

25 11. Respondent is subject to disciplinary action under Code section 2761, subdivision
26 (a)(4), on the grounds of unprofessional conduct in that Respondent's professional nurse license
27 was disciplined by the Arizona State Board of Nursing ("Arizona Board").

28 12. On or about March 19, 2008, pursuant to the Findings of Fact, Applicable Law,
Conclusions of Law, and Order No. 07A-0603053-NUR, issued by the Arizona Board, in the
disciplinary action entitled *In the Matter of Professional Nurse License No. RN084343 issued to
Joyce Marie Whitaker aka Phillips*, the Arizona Board revoked Respondent's professional nurse
license. The basis for the Order is as follows:

1 a. The Arizona Board established that Respondent intentionally withheld
2 physician-prescribed medication from patients under her care, which caused her patients
3 emotional injury, that Respondent made medication errors and errors in her notation in patient
4 records, and that she failed to follow her employers' policies regarding patient care and removal
5 of patient records.

6 b. The Arizona Board established that Respondent was confrontational and
7 aggressive and generally refused to take any direction or any responsibility for her errors, refused
8 her employers' attempts to help her salvage her employment and career, and generally blamed her
9 employers, colleagues, and her patients for her own professional shortcomings, which
10 compromised Respondent's care of her patients.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 13. Respondent is subject to disciplinary action under Code section 2761, subdivision
14 (a), in that Respondent committed acts of unprofessional conduct. The conduct is more
15 particularly described in paragraph 12, subparagraph (a) and (b), inclusive, above, and herein
16 incorporated by reference.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 615580, issued to Joyce
21 Marie Whitaker, also known as Joyce Marie Philips;

22 2. Ordering Joyce Marie Whitaker, also known as Joyce Marie Philips to pay the Board
23 of Registered Nursing the reasonable costs of the investigation and enforcement of this case,
24 pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: April 17, 2012

for Stacie Bar
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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